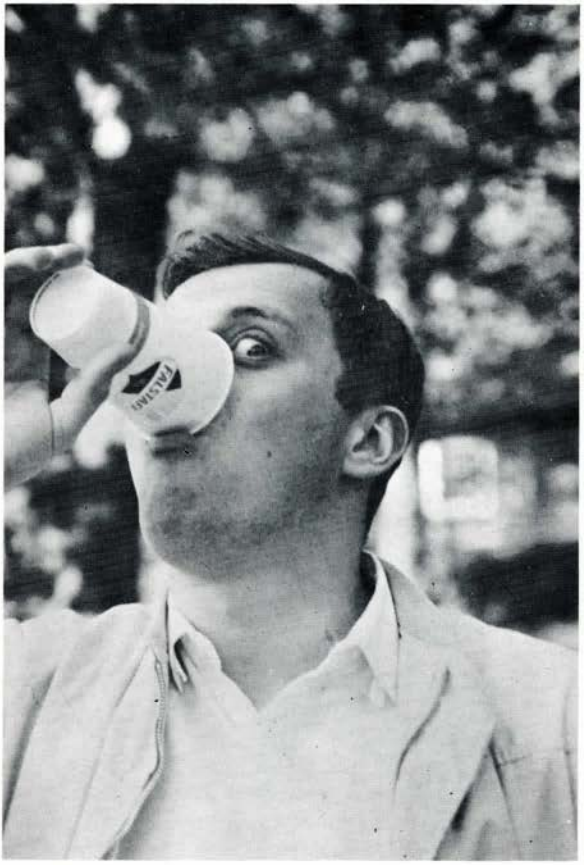
5-1967

May 1967

MICHIGAN ?

~~INDIANA~~ FLAW JOURNAL



Hi There. . .

INDIANA FLAW JOURNAL

BLOOMINGTON, INDIANA, 69069

Volume No. 1 **May, 1967** **Number 337-6185**

ARTICLES

WATER WONDERLAND STAFF

Editor-in-Chief:
PHIL YOUNG

Business Manager:
EMIL BECKER

Editorial Staff:
AL BACKER, MIKE ROYSTER,
BOB MILLER

SBA Officers — those for whom this was published.

President — Donald F. Foley
Vice Pres. — William L. Allen
Secy.-Treas. — Jan L. Chalfant
Sr. Rep. — Edward E. Brown
Jr. Rep. — Fred K. Horning

The Flaw Journal was founded, as near as we can determine from our shoddy research, in 1946 by a handful of courageous W.W. II veterans under the sponsorship of the Law Club. It popped out, after secret preparation, on Law Day each spring until 1958, when it was discontinued either because of indifference or popular demand. But, after a five-year breather, pop goes The Journal again.

The Journal is dedicated to the proposition that Law School is more than books and briefs: it is in addition a confrontation with memorable legal personalities and subject matter. It is financed entirely by its advertisers, and sponsored by the Bloomington Student Bar Assn.

Entered in the mails as pretty low-class matter.

NEW

"A ^ Tradition At I.U."

WE SERVE THE LAW STUDENTS—
Due to the recent inexplicable increase in business, we are unable to reserve booth space between the hours of 12:30 and 1:30 (or at any other time, for that matter). At other times we try to serve as many as possible, and during that hour, we try harder —— cf. The "No Loitering" signs posted in many booths.

WE SERVE THE FACULTY—
For all "Larks" we open at 7:00 A.M. Weekdays (11 A.M. on Saturdays), and for the "owls," we don't close 'till 9:45 P.M. weekdays.

WE SERVE THE LAW ALUMNI—
"When they return to the scene of the crime"

THE

GABLES

CHRIS, CHARLIE, PETE and NICK POOLITSAN

SHYLOCK, Plaintiff in Error,
v.
ANTONIO, et al., Defendants in Error
Supreme Court of Italy
Argued March 25, 1596
Decided Feb. 28, 1967

This is an action to take possession of collateral brought under Venice Uniform Commercial Code 9-503 (Burned 1591 Repl.). The defendants in error are merchants of Venice, and the plaintiff in error is engaged in the business of usury in that city. On November 18, 1595, the parties entered into a security agreement whereby plaintiff in error loaned to defendant in error Bassanio, with defendant in error Antonio as surety, the sum of three thousand ducats, and which provided:

> If you (i.e., Antonio) repay me (i.e., plaintiff in error) not on such a day,
> In such a place, such sum or sums as are
> Expressed in the condition, let the forfeit
> Be nominated for an equal pound
> Of your fair flesh, to be cut off and taken
> In what part of your body pleaseth me.

Upon default of the obligation, plaintiff in error filed his bill under 9-503 seeking a decree and order that the collateral be cut, extracted, amputated, or otherwise removed from the person of the surety and placed in the possession of the plaintiff in error. This the learned trial judge refused to do; instead he rendered judgment for the defendants in error upon their counterclaim for forfeiture of all the real and personal property of the plaintiff in error.

I

At the trial the obligor and surety admitted the agreement and that the three thousand ducats remained due, owing, and unpaid, but challenged the above-quoted provision as oppressive and contrary to public policy. See Campbell Soup Co. v. Wentz. In support of this contention it was urged, inter alia, that the quality of mercy is not strained, that it droppeth as the gentle rain from heaven upon the place beneath, that it is twice blest (i.e., insofar as and to the extent to which it blesseth him that gives and him that takes), and that in view of such considerations the learned trial judge should wrest once the law to his authority and render judgment for the defendants. Whatever merit there might be in these contentions, this Court's consideration of them is foreclosed by the clear and unambiguous language of 9-201, which reads: "Except as otherwise provided by this Act a security agreement is effective according to its terms between the parties . . ." Counsel for defendants in error in her impassioned arguments has re-

ferred us to no provision of the Code which would conceivably remove the instant case from the general provision of 9-201; indeed, some of the specific provisions of 9-503, e.g., that the secured party may "render equipment unusable" and "dispose of collateral on the debtor's premises," lead to the inference that such a case as the case at bar was clearly within the contemplation of the draftsmen of the Act. When the Legislature in its wisdom has spoken so unequivocally it is not the province of the courts, upon considerations of mercy or general equity, to engraft exceptions upon the public policy thus declared.

II

Defendants in error successfully argued in the court below that the security agreement, even if valid, should be construed to preclude the shedding of "one drop of Christian blood" in taking possession of the collateral. The plaintiff in error contends, and we agree, that this construction was unduly narrow. It is a well settled rule in this jurisdiction that where an instrument creates a right in a party, it impliedly permits the doing of any other acts or things reasonably necessary to secure the right. Certainly the trial court, in the exercise of sound judicial discretion, ought to be able to determine with fair precision the amount of bloodshed reasonably necessary for the extraction of this collateral.

III

The plaintiff in error has called our attention to several irregularities at the trial which clearly show that the learned trial judge was unduly prejudiced against him. At the outset of the trial the judge referred to the plaintiff in error as "a stony adversary, an inhuman wretch, incapable of pity, void and empty from any dram of mercy" and throughout the proceedings his rulings on motions were couched in such terms as "We all expect a gentle answer, Jew." These improprieties and ethnic remarks clearly deprived the plaintiff in error of due process of law and of the equal protection of the laws.

IV

Much of the confusion in this case was caused by the ineptitude and frivolity of the person engaged as court reporter below. Apparently unimpressed with the gravity and importance of this proceeding, he undertook to render the entire record into verse before submission to this Court on appeal. In consequence, the litigants have been deprived of the benefits of the clarity and precision with which legal language is customarily endowed, and have had to put up with the vagueness and vulgarity of some shabby stenotypist. While perhaps not reversible error in itself, this practice ought to be discouraged.

Reversed and remanded.

"THE LAW OF ABORTION," OR "LOVE'S LABOUR LOST"

I. INTRODUCTION.

That there is a decided lacuna in legal training in the area of abortion has been often commented upon.[1] In the interests, then, of elucidating the profession in a burgeoning area of conflict, some guidelines will here be furnished the practitioner.[2]

First of all, it should be noted that the procuring of an abortion is a crime under both statutes and the common law.[3] Also, civil actions may be brought in some states, but the variety of defense available is so overwhelming that few suits are in fact pursued. While there are few cases in the area,[4] the law has become fairly cut-and-dried. The following subjects will be treated, seriatim: (1) Definition and Elements; (2) Defenses; and (3) Public Policy.[5]

II. DEFINITION AND ELEMENTS.

It has been said, albeit more genteelly perhaps, that an abortion is a miscarriage of justice, in the strictest sense of the words. It is not, however, the mere expulsion of the fetus which constitutes the crime, but the criminal intent and use of artificial means.[6]

The intent element is often satisfied by attempting to abort, or by advising to abort. In some Neanderthal jurisdictions, mere possession of the "tools of the trade" i.e. abortifacients, will justify a conviction.[7] The more interesting problems arise, however, concerning the means employed. These are generally put into three categories: (1) Drugs or Noxious Substances; (2) Instruments; and (3) Other.[8] "Noxious Substances" has been held to encompass such esoteric items as tobacco administered with a syringe,[9] and soap and water,[10] but the

---

[1] See, e.g., 4 Bull. Cr. App. 102 (1963).

[2] Some names have been changed, for obvious reasons.

[3] Commonwealth v. Bangs, 9 Mass. 387 (1812).*

[4] This may be attributed to either the paucity or mobility of abortionists, cf. "A Good Man is Hard to Find", 1 Privy Part. 69, (1948).

[5] See "Unmarried Fathers, the Forgotten Men of the Law" (1962).

[6] But see, **contra**, Cop-out, "Oh Dad, Poor Dad, Mama's Hid Me in the Closet and I'm Feeling So Sad" (1965). Parenthetically, this book does **not** concern itself with Rush Week.

[7] State v. Hacker, 267 No. Pa. 113 (1887).

[8] 1 C.J.S. Abortion, S. 5.

[9] State v. Fitzgerald, 49 Iowa 260, 31 Am. Rep. 148 (1847).

[10] Commonwealth v. Viera. 329 Mass. 470, 109 N.E. 2d 171 (1952).

decisions are in conflict over the use of Bromo-Seltzer.[11] "Instruments" includes so many items that the mind boggles at the thought.[12] Hypnosis, however, has not been placed in this category as yet.

The last principal element is that of "quickening".[13] Mere pregnancy will not suffice, probably because etymologically "quicken" comes from the same root as "kickin".[14] Although exact figures are hard to find, three to four months is the usual time span allowed.

III. DEFENSES.

The principal defenses are four: (1) Entertainment; (2) Consent; (3) Clean Hands; (4) Necessity to Save Life. (1) **Entrapment.** With the rise in the number of policewomen, this defense is becoming ever more prevalent.[15] As yet, however. it has made little headway in the courts.[16] This defense, then, is no easy way out.

(2) **Consent.** A common defense is the consent of the woman, or Abortee.[17] Since the policy behind the statutes is theoretically to protect women from themselves,[18] however, the defense is usually of little avail in a criminal suit, the woman being generally considered the victim, not the culprit.[19] Even if the woman is engaged in a lewd profession, the defense will probably fail.[20]

(3) **Clean Hands.** Lest any gentle reader misunderstand, this defense relates to the defendant's state of mind, rather than to his physical characteristics.[21] Nonetheless, motive being irrelevant in the criminal law,[22] this defense also fails.

---

[11] **Compare** State v. Barf, 278 Miss. 102 (1878) **with** State v. Burp, 872 Hit, 201 (1788).

[12] The instrument need not be musical, however, and there is no reported case of a piccolo being employed.

[13] The "quick" refers to the foetus, not the mother.

[14] See the brilliant scholarly analysis in State v. Stuck 2 Fed. 2 (D. Ill., Pickle, J.)

[15] See "Catching 'Em Red-handed" 7 Mod. Pol. Prac. 11 (1964) for an explanation of this phenomenon.

[16] State v. Mystic Workers of the World, 197 Mich 246, 136 N.W. 101 (1896); Commonwealth v. Playfair, 31 West Co. 273 (Pa. 1789).

[17] To explain terminology, Abortor refers to the defendant, Abortee refers to the mother, and Abortion refers to the "fruit of the poison tree", i.e. the foetus.

[18] For the weaknesses of this policy, see **infra.**

[19] People v. Hyman, 284 App. Div. 347, 131 N.Y.S. 2d 691 (1951); Richey v. Darling, 183 Kans. 642, 331 P. 2d 281 (1960).

[20] People v. Clapp, 24 Cal. 2d 835, 151 P 2d 237 (1953).

[21] Royal Neighbors of America v. Butcher, 151 S.W. 858 (Mo. Cr. App. 1884).

[22] See e.g. Hall, "One Word, or the Typewriter Theory of Pedagogy" (Guggenheim Ed., 1689).

Indiana Memorial Union

WE ADVOCATE!!!

I. appellate pie

II. cherry tortes

III. hominy writs

AND MANY OTHER DELECTI

served in the dining rooms of the

Indiana Memorial Union

WHY NOT PAY US A VISIT SUE-N??

(4) **Necessity to Save Life.** Since it is the life of the Abortee referred to, and not that of the Abortion, this defense has been vituperatively castigated.[23] Notwithstanding all that, it remains the sole viable defense available to the Aborter in most states.[24] The real problem involved, though, is whether "life" should be extended to cover persons other than the Abortee, more specifically the Abortion and his progenitor.[25] As this naturally involves questions of grave public policy, it will be discussed immediately below in more detail.

IV. PUBLIC POLICY and CONCLUSION.

For too long now, abortion laws have been directed towards protecting the wrong people, i.e. women. In view of the population explosion, and female emancipation,[26] it would seem that it is high time that the prospective father receive more adequate redress. Countless thousands of men have had their emotional stability ruined by the news of their impending parenthood.[27] Many others spend numerous hours worrying over the imminent traumatic childbirth.[28] Why should society continue to perpetuate this anxiety?

Moreover, the rights of the Abortion should also be considered. His dying declarations are nowhere admissible.[29] Further, the name by which he is referred to borders on the defamatory. Who shall weep for him, if not the law?[30]

In sum, the abortion laws are archaic, antiquated, and antediluvian. Henceforth, the motto of the law of abortion ought to be, **"Ubi abortus, ibi justitia — fiat justitia."**

---

[23] Righteous, "The Straight Player Trade-Scandal of Abortion Law." (Hooey Pub. Co. 1956) esp. pp. 162-237.

[24] Temporary insanity has yet to be argued, but its use in recent income tax evasion cases may presage the future.

[25] See fn. 5, **supra.**

[26] Some law schools even admit prospective Abortees!

[27] See "Why Me, God?" 16 Planned Parenthood Journal (1966).

[28] "How Long, Oh Lord, How Long?" is an excellent and sympathetic treatment by F. Clemency.

[29] People v. Youngblood, 126 F. Supp. 216 (D. Ark. 1964).

[30] In a moving tribute to the rights of the Abortion, Professor Crotchit has penned these immortal words:

> "Consider the plight of the abortive foetus.
> Whose plaintive cries will never greet us;
> Doomed, post-mortem, by those quick with a quip
> To be known, forever amber, as a post-natal-drip."
>
> 18 Bung & Dung L. J. 23 (1967)

ROW 1: Breunig, Frey, Evon, Thompson, Adair, Nicholls, Brown, J., Brown, E., Casterline, Scholl, Moll.

ROW 2: Lees, Swihart, Brewer, Detrick, Goodwin.

ROW 3: Nixon, Kokinda, Tucker, Quinn, Gehring, Nunn, Copeland, Royster, Davis, B., Cohen, Wilkenfeld, Rutkowski, Lloyd, Heimann.

ROW 4: Androski, Foley, Becker, Davis, D., Wilson, Owen, Leash, Hafsten, Tibick, Randall, Woosnam.

ROW 5: Murray, Daily, Racster, Caplinger, Boyd, Kixmiller, Polizotto, Flotow, Abrutyn, Robbins, Kennedy, Young, Lundberg.

ROW 6: Bloom, Schappi, Sparks, Wozniak, Marshall, Brattain, Holt, Little, Collett, Bussel, Taylor, Hanning, Wallsmith, Smith.

THE INDIANA UNIVERSITY FOUNDATION

A non-profit corporation established to receive and administer funds
— Indiana Memorial Union —

FINAL EXAMINATION—TORTS

(Spring semester, 1970)

IN RE MILLY THE MOUSE

Now let's start from the beginning. Milly was born in Mouseville, a little mouse village in a hole in Old Miss Floppy Ears' pantry. Milly's parents, living inside a pantry, had all the food they wanted of course by fooling Old Miss Floppy Ears, and it made her very mad. She set traps and did everything to catch the mice, but the mice were too smart for her. Everytime she set a trap the mice got the cheese, but she never got the mice. It was like that for a long time until one night her father was caught. Old Miss Floppy Ears had her radio on so loud that night the mice could not sleep. So they started hitting pots and pans with all their might. Of course this made Old Miss Floppy Ears very mad so she shut off her radio and went to bed and the mice stopped hitting the pots and pans and they too went to bed. The next morning when the mice got up, Old Miss Floppy Ears was just finishing her breakfast. The mice were late getting up and the traps were already set. First the mother tried to get the cheese, but she touched the wrong thing and bing! she was caught. Now both of Milly's parents were dead. Now Milly was on her own. First she went out and started beating pots and pans. Again it made Old Floppy Ears very mad and when Old Miss Floppy Ears went into the pantry she saw Milly and then she saw Milly's mother in the trap. She knew there was only one more mouse to catch so she set another trap and this time she tied the cheese on. Well Milly didn't know this and she started to get the cheese. Then she saw the string on it and she knew it was tied on, so she walked away. After closing the little door of her house she sat down. Just then there was a knock at the door, and, when she opened the door, there stood a handsome boy mouse. They fell in love on the spot and were married the next day and lived happily ever after.

40 minutes—On no more than 15 pages in your blue book discuss all possible causes of action by Milly against Old Miss Floppy Ears, and anticipate, as defendant's counsel, what defenses you would use. Please give NO reasons for your answers.

Theft Saw An Oddity, or The Restatement Of The Obvious

By Professor M. D. Hall, D.L.P., D.F.P., D.C.[1]

This noted[2] work is divided into two sections; an old historical view and an older historical view; the former being entitled "Current Problems".

To use the scholarly[3] approach I shall deal first with the last section of the book, the first section to come last, or in other words, the former latter and the latter former. This review shall provide a clear structure upon which the currents of concomitant social change, the contemporary ideologies, the question of normalivity of social facts, and the nature of **Theft saw an oddity** shall become ——[4], and shall follow that great legal maxium

"In ambigua voce scripsi ea potius accipienda est significatio quae vitio caret vagus praesertim cum etiam voluntas scipsi est ipso."[5]

"Current Problems"

The section in **Theft saw an oddity** entitled "Current Problems" is valuable to the practice of law by even the average advocate, and invaluable to add tittilating conversational facts to the average advocate's cocktail party. It contains information such as, a man named Bizzard is the "most notorious receiver of stolen jewelry in England **in recent years**"[6].

This section is a veritable cupboard of bones, two outstanding examples being the fact that ten (10) automobiles were stolen in Liverpool, England in 1919[7], and that there were two (2) death sentences handed down for embezzlement in both Leningrad and Kharkov, Russia in 1932.

I could go on and on, but why when this book does it for me.

---

[1] D. L. P., Doctor of Latin Phrases
D. F. P., Doctor of French Phrases
D. C., Doctor of Confusion, this being honorarly bestowed upon M. D. Hall by his students

[2] Noted well, as can be seen on page 128 where footnote 45 runs 3 pages in length (128, 129, 130).

[3] A method made famous at the Indiana University School of Law having the equivalent meaning of "confusing."

[4] One word!; one word! clear? scholarly? (see footnote #3)

[5] "In an ambiguous book, that signification is to be preferred which is consonant with the obvious, especially when the spirit of the book is itself that."

[6] P. 157, "in recent years" is footnoted as being in 1913.

[7] P. 239

Your Indiana University School of Law Alumni Association

Needs Your Active Support In The Years Ahead!

Indiana University
School of Law Alumni Assn.
M-17 Union Building
Bloomington

1966-1967 OFFICERS

RICHARD E. AIKMAN, — PRES.
INDIANAPOLIS

LINDY G. MOSS, — V. PRES.
FORT WAYNE

JOSEPH A. FRANKLIN, JR. — SEC.
FORT WAYNE

LEU E. BUNGER, JR. — TREAS.
BLOOMINGTON

CARL D. OVERMAN, — EXEC.
COUNCIL REPRESENTATIVE
INDIANAPOLIS

Historical Perspective

The section entitled "Historical Perspective" is not unlike the "Current Problem" section, it also contains the tit-[8]tilating facts indespensible to the successful fact dropper i.e., the number of sheep stolen in England and Wales in 1813 was 125 and the number of persons executed for sheep stealing in England and Wales that same year was two (2).[9]

One will notice that this number of executions in England for sheep stealing in 1813 is in direct correlation with the number of executions in Leningrad and Kharkov, Russia for embezzlement in 1932[10] (1:1). This I am sure will be the topic of M. D. Hall's next book, made possible by a research grant from the inhabitants of the Boston Commons.

To sum up as I am sure M. D. Hall would, "This book contains many words".

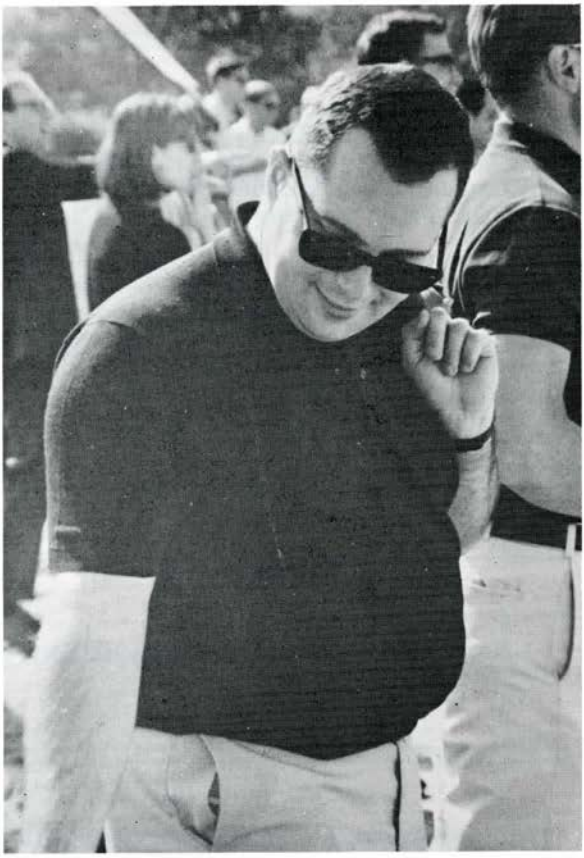
Miller R. W.

---

[8] P. 301
[9] No, I am not preoccupied with that word!
[10] P. 132

To the Gables for lunch. . .

. . .From the
Gables after lunch!



BEHIND EVERY MARRIED LAW

STUDENT THERE IS A WOMAN!

BUT WHICH WOMAN?

YES VIRGINIA, THERE IS A FLAW JOURNAL

The Flawless Staff

FLAW JOURNAL EDITORIAL

Upon entering Law School, I overheard a heated argument, and someone said, "There is no mens rea." I immediately ran out and looked for a privy elsewhere. I entered an unheated outbuilding with my nickel firmly clasped in my hand when a white-haired old gentleman said smilingly, "strictly quare clausum fregit young chap!" I replied, "I know it is cold out here." Whereupon he with a quizzical look rebutted with, "You better start thinking deep in order to get the richness and fullness."

While pondering this statement I entered the small outbuilding, deposited my nickel in the door, and took my favorite seat for some deep "thinking." Upon the littered floor I found a copy of handout 2, seminar 1, 3rd phase, 2nd edition, copy 184 of Deep Think, written, revised, edited and copyrighted by Fritz Panzerfaust. Someone had scrawled on the front, "Good material to use while leaning on the bar." I was intrigued.

While meditating and reading I was amazed at the new connotations given to words. For example: I had always thought that scarie faces were Halloween masks; I was surprised to note that animus furandi was not a furbearing animal; that lateral and subjacent support had nothing to do with trusses and ruptures; that ejusdem generis did not refer to heredity; that scienter was not a type of sword; that tort was not an evil woman, but could be by being with one; that batteries were not only used in cars; that ejectment was not only associated with firearms; that assumpsit was not a drainage pit; that all the seals aren't in the zoos; that a reasonable man is someone who thinks like I do; that a bailor does not work in a leaking boat; that "When It's Assize Time in England" was not a hillbilly tune; that one can be convicted of raping statues if they are less than 18 years old, but even so I don't see how it's possible—and much to my consternation even the animal kingdom has its ferae naturaes!

As a result of my "Deep Thinking" I had to open the window. In my case quantum valent was very impressive and a product of my deep think. Hearing the bell I quickly arose and found that some considerate future lawyers had asporated all the tissue. The place was scottissue free because the issue de novo had been settled many times before in this chamber of original jurisdiction.

So, applying the deep thinking (slippery paper) to an area of factual ramification, keeping in mind the doctrine of clean hands, I departed, relieved, to the hallowed halls. I realized then and now that legal deep thinking is the remedy, privilege and right to be enjoyed by leaders steeped in tradition and filled to the brim with the legal process which will enable them to make a sound deposit to the heap o' law spreads throughout the world!

You can get "stinkin from thinkin," take your deep think problems to the Privy Council.

*This report was prepared by Mr. Mucky Moose, outstanding first year student and candidate for the society of Excretimus Regis. Among his other published works, is the popular tretise on "Why Tim Mix Eats Hot Ralston." (First edition currently displayed on the west wall of the water closet in Nick's English Hut.)

AUTOGRAPHS

(This space provided for the autographs of those in the class of 1967 who are destined for greatness)

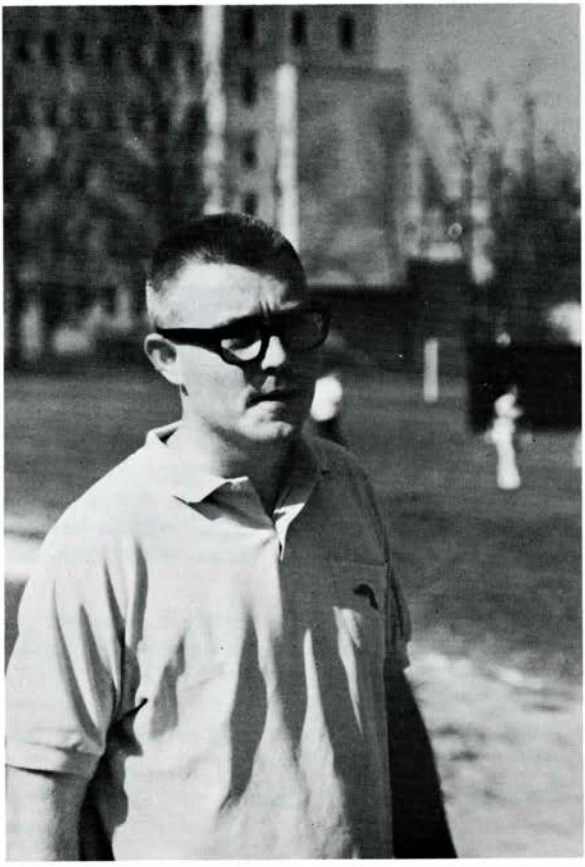
We would all like to

Thank this gentleman

For the job he has done

As Student Bar Assn. President

This year.



But. . .